



COMMITTEE ON BILLS ON SECOND READING

December 5, 2023 at 5:45 PM

Aldermanic Chambers, City Hall (3rd Floor)

Members: Aldermen Gamache, T. Sapienza, Fajardo, E. Sapienza, George-Kelly

AGENDA

The Chairman calls the meeting to order.

The Clerk calls the roll.

1. Ordinance Amendment:

“Amending Chapter 38: Procurement Code of the Code of Ordinances of the City of Manchester by adding additional requirements during the prequalification of bidders associated with the procurement of City construction contracts.”

(Note: Communication from the President of Associated Builders & Contractors recommending some changes is attached.)

If the Committee so desires, a motion would be in order that the Ordinance Amendment ought to pass and be referred to the Committee on Accounts, Enrollment and Revenue Administration.

2. “An Ordinance amending the Zoning Ordinance, Chapter 155 of the City of Manchester Code of Ordinances, to provide reasonable accommodations to disabled persons by defining “disability” and adopting RSA 674:33, V.”

If the Committee so desires, a motion would be in order that the Ordinance Amendment ought to pass and be referred to the Committee on Accounts, Enrollment and Revenue Administration.

If there is no further business, a motion is in order to adjourn.

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-Three

AN ORDINANCE

“Amending Chapter 38: Procurement Code of the Code of Ordinances of the City of Manchester by adding additional requirements during the prequalification of bidders associated with the procurement of City construction contracts.”

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Be it Ordained, by the Board of Mayor and Aldermen of the City of Manchester, as follows:

I. Amend the Code of Ordinances by inserting new language as bolded (**bold**) and deleting existing language as stricken (——). Portions of the following sections that remain unchanged appear in regular type.

§ 39.08 PREQUALIFICATION OF BIDDERS.

(A) Prequalification of potential bidders shall be accomplished for all contracts for construction, reconstruction, alteration and repair or refurbishing of real property with an estimated project cost in excess of \$250,000. Prequalification of contractors based on the type of work and dollar limits may be done annually. The invitations for bids shall be issued only to firms that have, in the city's sole determination, been prequalified.

(B) The purchasing agency involved shall establish rules and regulations that govern prequalification of bidders. The rules and regulations shall take into consideration:

- (1) The ability, capacity, and skill of the bidder to perform the contractor provide the service required.
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance on previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of financial resources and ability of the bidder to perform the contract.
- (7) The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service.
- (9) The number and scope of bidder conditions attached to the bid.
- (10) The amount of total direct and indirect costs that would be incurred by the city because of the bid.
- (11) The ability of the bidder to meet the city's bonding and insurance requirements.

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(12) Whether the applicant has a responsible company safety program in place.

(13) Whether the applicant's OSHA incidence rate for reported injuries is reasonable.

(14) Whether the applicant has a record of compliance or noncompliance with employment discrimination laws or labor laws.

(15) Whether the applicant has provided a certificate demonstrating that it provides workers compensation insurance for its employees.

(16) Whether the applicant certifies that its workers are properly classified as employees or independent contractors for purposes of workplace provisions such as workers' compensation insurance coverage, unemployment benefits, social security and income tax withholding, and the Affordable Care Act.

The City reserves the right to not prequalify potential bidders if any of the above criteria are not met, in its' sole discretion.

(C) These rules and regulations may also include other special considerations as authorized by law.

II. This ordinance shall take effect immediately upon its passage.

**ABC New Hampshire
Vermont**
Associated Builders and Contractors

November 1, 2023

RECEIVED

NOV 02 2023

City Clerk's Office

Mayor Joyce Craig and
City of Manchester Board of Aldermen
Manchester City Hall
One City Hall Plaza
Manchester, NH 03101

Re: Comments on Proposed Amendments to City of Manchester Procurement Ordinance as Approved by the City Committee on Administration/Information Systems

Dear Mayor Craig and Manchester Board of Aldermen:

My name is Josh Reap, and I have the honor of serving as President and CEO of the Associated Builders and Contractors for New Hampshire and Vermont (ABC). Our organization is made up of more than 281 member businesses in New Hampshire who employ thousands of Granite Staters, many of whom live and work in and around Manchester. We are dedicated to helping contractors develop their people and deliver work safely, ethically and profitably for the betterment of our state and its communities.

I am writing to you concerning a set of proposed amendments which the City Committee on Administration/Information Systems approved on October 17th. I have attached a copy of that proposal here for your easy reference. While we are pleased that the much more onerous ordinance proposal from May has been set aside in lieu of the one attached here, we still have a few concerns and modest comments we wish to share with you now.

- **In section 39.08 proposed new subsection (B) (12), the proposed language states "Whether the applicant has a responsible company safety program in place."**

ABC's comment: We believe this language is overly vague and open to various interpretations. We might suggest: "Applicant must certify that all tradespeople employed on the site have gone through the OSHA 10 hour training class. If a tradesperson is found not to have had OSHA 10 training, they must undergo the training and provide a copy of their OSHA 10 card within five (5) business days of discovery of deficit."

- In section 39.08 proposed new subsection (B)(13), the proposed language states **“Whether the applicant’s OSHA incidence rate for reported injuries is reasonable.”**

ABC’s comment: We believe “incident rate” must be tied to something tangible, such as U.S. Bureau of Labor Statistics (BLS) standards. For example: *“Incidence rate no greater than 50 percent above the national BLS average for the company’s NAICS code for the two most recently published years of BLS data. (For companies with fewer than 100 employees, a three-year average may be used. For companies with fewer than 50 employees, a 5-year average may be used).”*

- In section 39.08 proposed new subsection (B)(14), the proposed language states **“Whether the applicant has a record of compliance or noncompliance with employment discrimination laws or labor laws.”**

ABC’s comment: We believe this would be difficult to determine, as there is no centralized point to research and file such claims. Instead, we propose “Whether the applicant has any New Hampshire state Department of Labor, or US Federal Department of Labor issued “Willful Violations” determinations for violation of employment discrimination laws or labor laws within the last two years.”

- In section 39.08 proposed new subsection (B)(16), the proposed language states **“Whether the applicant certifies that its workers are properly classified as employees or independent contractors for purposes of workplace provisions such as workers’ compensation insurance coverage, unemployment benefits, social security and income tax withholding, and the Affordable Care Act.”**

ABC’s comment: We are concerned this could be construed as a mandate on small independent contractors. Instead, we propose, “Whether the applicant certifies that its employees are properly classified.”

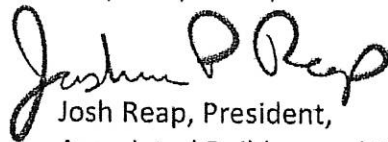
We recognize the city’s important concerns in ensuring competent and qualified contractors work on its projects, and share its broad objectives. As you know, construction is already a highly regulated industry, with high standards for safety, oversight by OSHA, insurance and bonding requirements, and training standards among other observable benchmarks. Nationally, ABC contractors privately invest a collective \$1.3 billion in workforce development, craft education, safety training and upskilling workers. Our members proudly take these commitments seriously, and through these efforts, today’s workforce is more highly skilled than ever, safer and empowered to be leaders in a great career field.

Our hope in providing these comments and observations is twofold. First, as specifically related to this proposed ordinance, to ensure it accomplishes the tasks it seeks to achieve without confusion over vagueness or creating an undue burden on small businesses. Second, to establish ourselves as a helpful resource for you moving forward on these types of issues.

I would welcome a chance to speak further with any of you interested in discussing this pending proposal, concerning the construction industry generally, or to arrange a visit to one of our terrific member companies.

Thank you for your service and for your consideration of our concerns.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Josh Reap". The signature is fluid and cursive, with the first and last names being prominent.

Josh Reap, President,
Associated Builders and Contractors, NH / VT Chapter

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-Three

AN ORDINANCE

“An Ordinance amending the Zoning Ordinance, Chapter 155 of the City of Manchester Code of Ordinances, to provide reasonable accommodations to disabled persons by defining “disability” and adopting RSA 674:33, V.”

I. Amending the Zoning Ordinance, Chapter 155 of the City of Manchester Code of Ordinances, as follows:

Note: New text shown bold and italicized.

Revise Section 3.03 by inserting the following between the defined terms of “Development, New” and “Driveway”:

Disability (also Handicap): The definitions of “disability” and “handicap” used in this Ordinance shall conform to the meaning of those words as used in the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and the Fair Housing Act (42 U.S.C. 3601, et seq.), as amended. With respect to an individual, “disability” or “handicap” shall mean: a) a physical or mental impairment that substantially limits one or more major life activities of such individual, including being in recovery from chemical dependency; b) a record of such an impairment; or c) being regarded as having such an impairment. This definition shall not include impairments resulting from the current illegal use of a controlled substance.

Revise Section 3.03 by inserting the following between the defined terms of “Halfway House” and “Historic Structure”:

Handicap: See Disability.

Revise Section 14.02(B) by inserting the following:

7. The Zoning Board of Adjustment may grant a variance from the terms of this Ordinance without finding a hardship arising from the condition of a premises subject to this Ordinance, and thus not comply with Section 14.02(B)(e) above, when reasonable accommodations are necessary to allow a person or persons with a recognized disability to reside in or regularly use the premises, provided that:

a. Any variance granted under this paragraph shall be in harmony with the general purpose and intent of this Ordinance, and

b. In granting any variance pursuant to this subsection, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

II. Resolve this ordinance shall take effect upon passage.